

Sklar v Itria Ventures, LLC
2022 NY Slip Op 31800(U)
May 31, 2022
Supreme Court, New York County
Docket Number: Index No. 154067/2019
Judge: Lucy Billings
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SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK: PART 41

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JEFFREY SKLAR,

Plaintiff

Index No. 154067/2019

-against-

DECISION AND ORDER

ITRIA VENTURES, LLC, NOSSON R. SKLAR
a/k/a NATHAN R. SKLAR, GRAND STREET
MEDICINE AND REHABILITATION, P.C.,
COMPREHENSIVE KIDS DEVELOPMENTAL SCHOOL,
COMPREHENSIVE EVALUATION SERVICES, PLLC,
COMPREHENSIVE MANAGEMENT MSO INC.,
COMPREHENSIVE STAFFING SOLUTIONS LLC,
MARGOT M. SIGMONE, CAROLANN M. O'DELL,
JORDON PARKER, and JONATHAN S. GITLIN,

Defendants

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LUCY BILLINGS, J.S.C.:

I. BACKGROUND

When plaintiff previously moved to amend his complaint the court (Lubell, J.) denied his motion, as plaintiff had failed to submit a proposed amended complaint that showed the proposed changes. C.P.L.R. § 3025(b); Decision and Order (Sept. 8, 2021), NYSCEF Doc. No. 263. Plaintiff now moves again to amend his complaint to join three new defendants and to add three causes of action: negligent infliction of emotional distress, violation of his civil rights, and loss of consortium. C.P.L.R. §§ 1002(b), 3025(b). In addition to the proposed amended complaint, plaintiff has filed a highlighted version of the proposed amended complaint that illustrates the proposed changes. Aff. of Abraham

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Borenstein Ex. S, NYSCEF Doc. No. 291.

Plaintiff withdraws his motion to the extent that it seeks to add his wife, Sariva Sklar, as a plaintiff. Since only she has brought the loss of consortium claim, the court considers the withdrawal of her as a plaintiff as also a withdrawal of that proposed claim.

The gist of the original complaint is that plaintiff's brother, defendant Nosson R. Sklar (Nosson), operated a group of physical rehabilitation businesses on the Lower East Side of Manhattan (the Nosson businesses). Nosson and his businesses entered various Future Receivables Sale Agreements (FRSAs) with defendant Itria Ventures LLC through which it purchased the Nosson businesses' future receivables. According to the complaint, to induce Itria Ventures to enter those transactions, Nosson forged plaintiff's signature on personal guaranties and confessions of judgment. Itria Ventures then obtained a judgment in New Jersey against plaintiff, which Itria Ventures has sought to enforce.

Defendants Sigmone and O'Dell notarized the allegedly forged documents. Defendants Parker and Gitlin are attorneys who represented Itria Ventures in enforcing the allegedly forged documents. The original complaint claims fraud, usury, negligence, and intentional infliction of emotional distress and seeks to vacate Itria Ventures' judgments against plaintiff.

II. PLAINTIFF'S MOTION TO JOIN PARTIES AND AMEND THE COMPLAINT

In the proposed amended complaint, plaintiff seeks to join Biz2Credit, an affiliate of defendant Itria Ventures, Corey Falkin, a Biz2Credit employee, and Ramit Arora, president and owner of Itria Ventures and Biz2Credit, as defendants. As set forth above, since plaintiff has withdrawn his motion to the extent that it sought to join his wife as a plaintiff, and the new claim for lost consortium in the proposed amended complaint was solely on her behalf, the court considers that proposed claim withdrawn, leaving the addition of the other two new claims and the proposed joinder of new defendants to be determined. Permission to amend the complaint to add new claims and to allege the current claims against new defendants is freely granted unless the amendment would surprise or otherwise prejudice the opposing parties, Davis v. South Nassau Communities Hosp., 26 N.Y.3d 563, 580 (2015); Kimso Apts., LLC v. Gandhi, 24 N.Y.3d 403, 411 (2014); Machado v. Gulf Oil, L.P., 195 A.D.3d 26, 30 (1st Dep't 2021); Mashinsky v. Drescher, 188 A.D.3d 465, 466 (1st Dep't 2020), or the amendment lacks merit. C.P.L.R. § 3025(b); Mashinsky v. Drescher, 188 A.D.3d at 466; Avail 1 LLC v. Acquafredda Enters. LLC, 184 A.D.3d 476, 477 (1st Dep't 2020); Brook v. Peconic Bay Med. Ctr., 172 A.D.3d 468, 469 (1st Dep't 2019); WDF, Inc. v. Trustees of Columbia Univ., 170 A.D.3d 518, 519 (1st Dep't 2019).

The opposing defendants first ask the court to deny

plaintiff's motion based on his failure to certify the word count for his supporting memorandum of law. 22 N.Y.C.R.R. § 202.8-b(c). While the opposing defendants are correct about the omission, they have waived this objection by not returning the memorandum to plaintiff with a statement of their objection. C.P.L.R. § 2101(f). For this reason, and because plaintiff's memorandum does not exceed the 7,000 word limit, 22 N.Y.C.R.R. § 202.8-b(a), the court will not deny plaintiff's motion due to the omitted word count. C.P.L.R. § 2001.

III. THE PROPOSED DEFENDANTS

A. Biz2Credit

Plaintiff seeks to join Biz2Credit as a defendant, alleging "[u]pon information and belief" that Biz2Credit is an entity affiliated with Itria Ventures. Borenstein Aff. Ex. Q ¶ 22, NYSCEF Doc. No. 289. Plaintiff alleges "[u]pon information and belief" that Biz2Credit is an online business that connects small businesses seeking loans with potential lenders, including Itria Ventures, and provides underwriting services to Itria Ventures. Id. ¶¶ 27-28, 34. Plaintiff further alleges that Biz2Credit somehow benefitted from the forged FRsAs and knew or should have known that plaintiff was uninvolved in the Nosson businesses' daily activities. Plaintiff alleges no facts regarding how or when Biz2Credit benefitted from the FRsAs or the basis for Biz2Credit's knowledge about plaintiff. The allegations are vague, entirely conclusory, and devoid of any evidentiary facts

to support any claims against Biz2Credit or a theory that Biz2Credit was Itria Ventures' alter ego. The proposed amended complaint thus is "palpably insufficient [and] clearly devoid of merit" as to Biz2Credit. WDF, Inc. v. Trustees of Columbia Univ., 170 A.D.3d at 519. Therefore the court denies joinder of Biz2Credit as a defendant. C.P.L.R. § 1002(b); Mees v. Stibbe N.Y.B.V., 195 A.D.3d 569, 569 (1st Dep't 2021); Bossung v. Rebaco Realty Holding Co., N.V., 169 A.D.3d 538, 538 (1st Dep't 2019); Hoppe v. Board of Directors of 51-78 Owners Corp., 49 A.D.3d 477, 477 (1st Dep't 2008); American Theatre for the Performing Arts, Inc. v. Consolidated Credit Corp., 45 A.D.3d 506, 506 (1st Dep't 2007).

B.. Falkin

The proposed amended complaint alleges that Corey Falkin worked for Biz2Credit and, on this basis alone, concludes "[u]pon information and belief" that he also worked for Itria Ventures. Borenstein Aff. Ex. Q ¶¶ 24-25. Plaintiff alleges no other conduct by Falkin, but further concludes that Falkin also benefitted from the allegedly forged FRSA's and knew or should have known that plaintiff was uninvolved in the Nosson businesses' daily activities and that his signature was forged on the loan documents. Again, the proposed amended complaint lacks any factual allegations to support the benefit Falkin derived, the knowledge imputed to him, or any claims against him. To the extent that plaintiff relies on a theory of piercing the

corporate veil that would render Falkin personally liable for defendant entities' actions, plaintiff fails to allege that Falkin owned or dominated the entities in any respect and used that domination over the entities to harm plaintiff. Cortlandt St. Recovery Corp. v. Bonderman, 31 N.Y.3d 30, 47 (2018); Sutton 58 Assocs. LLC v. Pilevsky, 189 A.D.3d 726, 729 (1st Dep't 2020). For the same reasons explained above, the proposed amended complaint is also "palpably insufficient [and] clearly devoid of merit" as to Falkin. WDF, Inc. v. Trustees of Columbia Univ., 170 A.D.3d at 519. Therefore the court also denies joinder of Falkin as a defendant. C.P.L.R. § 1002(b); Mees v. Stibbe N.Y.B.V., 195 A.D.3d at 569; Bossung v. Rebaco Realty Holding Co., N.V., 169 A.D.3d at 538; Hoppe v. Board of Directors of 51-78 Owners Corp., 49 A.D.3d at 477; American Theatre for the Performing Arts, Inc. v. Consolidated Credit Corp., 45 A.D.3d at 506.

C. Arora

According to the proposed amended complaint, "[u]pon information and belief" Ramit Arora is the president and a principal owner of both Itria Ventures and Biz2Credit. Borenstein Aff. Ex. Q ¶ 23. Plaintiff alleges that Arora owed plaintiff a duty not to involve him in defendant entities' debts or transactions, that Arora benefitted from the alleged forgeries, and that Arora's use of the fraudulently signed documents violated the duty Arora owed to plaintiff and

constituted fraud, bad faith, and professional malpractice. Once again, plaintiff fails to allege facts supporting Arora's personal duty, professional obligation, or misrepresentation to plaintiff. Itria Ventures or Arora on its behalf may have been obligated to investigate the guarantors of Itria Ventures' loans for its own purposes, but no alleged facts support lender and creditor Itria Ventures' or Arora's fiduciary duty or other obligation to a borrower or a borrower's guarantor and a debtor such as plaintiff.

Absent those facts, plaintiff is relegated to reliance on a veil piercing theory to impute Itria Ventures' alleged liability to Arora. Yet, similarly to Falkin, plaintiff also fails to allege facts that support piercing the corporate veil to hold Arora liable for any entity's actions. Therefore the court similarly denies joinder of Falkin as a defendant. C.P.L.R. § 1002(b).

IV. THE PROPOSED CLAIMS

A. Negligent Infliction of Emotional Distress

The amended complaint's sixth cause of action is for negligent infliction of emotional distress, which requires allegations that defendants breached a duty of care owed to plaintiff and that defendants' conduct was extreme and outrageous and caused plaintiff to fear for his safety. Xenias v. Roosevelt Hosp., 180 A.D.3d 588, 589 (1st Dep't 2020); Sacino v. Warwick Valley Cent. Sch. Dist., 138 A.D.3d 717, 719 (1st Dep't 2016).

Plaintiff adds allegations that defendants owed to him a duty not to notarize his signature on documents he did not sign, not to use the loan documents and confessions of judgment against him, and not to litigate against him. Yet he alleges no relationship with any of defendants that would create such a duty. Obviously the two notary defendants owed a duty not to notarize the signature on a document of anyone who did not sign it, but plaintiff further fails to allege any facts suggesting that he feared for his safety. The claim for negligent infliction of emotional distress thus is without merit, requiring denial of plaintiff's motion to amend the complaint to the extent that the motion seeks to add this claim. C.P.L.R. § 3025(b); Mashinsky v. Drescher, 188 A.D.3d at 466; Avail 1 LLC v. Acquafredda Enters. LLC, 184 A.D.3d at 477; Brook v. Peconic Bay Med. Ctr., 172 A.D.3d at 469; WDF, Inc. v. Trustees of Columbia Univ., 170 A.D.3d at 519.

B. Violation of Constitutional Rights

The proposed seventh cause of action claims that New York lacks jurisdiction over plaintiff to enforce the FRSAs, confessions of judgment, and guaranties and that defendants' failure to vacate and discharge the underlying judgments violates his federal and New York State constitutional rights. Constitutional rights protect against actions by the state, not by private actors; thus only state actors may violate constitutional rights. 42 U.S.C. § 1983; American Mfrs. Mut.

Ins. Co. v. Sullivan, 526 U.S. 40, 50-51 (1999); DiPalma v. Phelan, 81 N.Y.2d 754, 756 (1992); SHAD Alliance v. Smith Haven Mall, 66 N.Y.2d 496, 502 (1985); Callaghan v. United Fedn. Of Teachers, 133 A.D.3d 412, 412-13 (1st Dep't 2015). See Brentwood Academy v. Tennessee Secondary School Athletic Ass'n, 531 U.S. 288, 295-96 & n.2 (2001); Consumers Union of U.S., Inc. v. State of New York, 5 N.Y.3d 327, 347 n.14 (2005). Plaintiff has not alleged that defendants acted under color of law. The claim for violation of plaintiff's federal and state constitutional rights thus is without merit, requiring denial of plaintiff's motion to amend the complaint to the extent that the motion seeks to add this claim. C.P.L.R. § 3025(b).

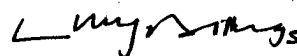
V. CONCLUSION

In sum, plaintiff has withdrawn his motion to join his wife as a plaintiff and to add a lost consortium claim, leaving only the parts of the motion that seek to join Biz2Credit, Falkin, and Arora as defendants and add claims for negligent infliction of emotional distress and violation of plaintiff's civil rights. Since the proposed amended complaint lacks merit to the extent that it seeks to join the proposed defendants and add these two causes of action, the court denies plaintiff's motion. C.P.L.R. §§ 1002(b), 3025(b).

To the extent that plaintiff moves to amend his complaint to add factual allegations in support of his claims in the original complaint, he may serve an amended complaint with only those

changes within 20 days after entry of this order. C.P.L.R. § 3025(b). Defendants may address those new allegations in an amended answer or a motion to dismiss any of the original claims within 20 days after service of an amended complaint in compliance with this order. C.P.L.R. § 3025(d).

DATED: May 31, 2022



LUCY BILLINGS, J.S.C.

LUCY BILLINGS
J.S.C